

UNITED STATES v. ZACARIAS MOUSSAOUI (NO. 01-455)
SUBSTITUTION FOR THE TESTIMONY OF
RITA FLACK AND SHERRY SABOL REGARDING THE PHOENIX EC

If called to testify, these witness would say the following:

Positions

During calendar year 2001, Rita Flack was an Intelligence Operations Specialist (IOS) in FBI Headquarters in the Radical Fundamental Unit (RFU), which was part of the International Terrorism Operations Section (ITOS). Ms. Flack began working for the FBI in 1976 in a clerical position. In 1980, she was promoted to a paralegal specialist position, where she handled Freedom of Information Act requests. In 1993, she was promoted to the IOS position and assigned to a substantive unit in ITOS. In approximately 1994, the RFU was formed, and Flack was assigned to that newly created unit. In 2001, Flack had responsibility for terrorism matters with a connection to two African countries.

In August 2001, Flack was assigned to work with Michael Maltbie on the Zacarias Moussaoui case. At the time, Maltbie was a Supervisory Special Agent in the RFU who was working on the request from the Minneapolis Office of the FBI for a Foreign Intelligence Surveillance Act (FISA) warrant to search Moussaoui's property.

During calendar year 2001, Sherry Sabol was an attorney in the National Security Law Unit (NSLU) of the FBI's Office of General Counsel. The role of the attorneys in the NSLU, among other matters, was to provide advice to FBI employees in the substantive units in ITOS. In 2001, pre-September 11, NSLU attorneys spent a large amount of time handling questions related to FISA, including requests for warrants, execution of FISA orders, and dissemination of the information collected pursuant to FISA.

The Phoenix EC

In July 2001, Kenneth Williams was an FBI Special Agent in the FBI's Phoenix Division. Williams wrote an electronic communication (EC) dated

July 10, 2001 (the "Phoenix EC"), which has been marked as defendant's exhibit 129, and a copy of which is attached. In the EC, Williams wrote that he believed that there was "the possibility of a coordinated effort by Usama Bin Laden (UBL) to send students to the United States to attend civil aviation universities and colleges." He suggested that the purpose of this effort was "to establish a cadre of individuals who will one day be working in the civil aviation community around the world . . . [so that they] will be in a position in the future to conduct terror activity against civil aviation targets."

The Phoenix EC recommended that "the FBI should accumulate a listing of civil aviation universities/colleges around the country," and that "FBI field offices with these types of schools in their area should establish appropriate liaison." The EC also suggested that "FBIHQ should discuss this matter with other elements of the U.S. intelligence community and task the community for any information that supports Phoenix's suspicions." "FBIHQ should consider seeking the necessary authority to obtain visa information from the [U.S. Department of State] on individuals obtaining visas to attend these types of schools and notify the appropriate FBI field office when these individuals are scheduled to arrive in their area of responsibility."

The Phoenix EC also stated that "Phoenix believes that it is more than a coincidence that subjects who are supporters of UBL are attending civil aviation universities/colleges in the State of Arizona," and that "Phoenix believes that it is highly probable that UBL has an established support network in place in Arizona." The EC concludes that the information in the EC was "being provided to receiving offices for information, analysis and comments."

Williams addressed the EC to the RFU and UBL units, the FBI's New York Division, and to individual agents, including Supervisory Special Agent David Frasca in the RFU.

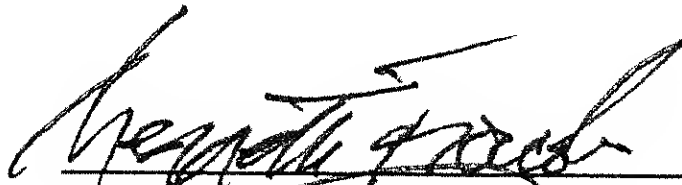
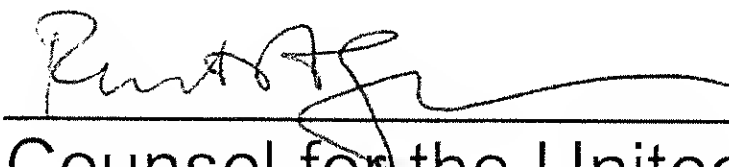
Rita Flack, Sherry Sabol and the Phoenix EC

In connection with her work on the Moussaoui case, Rita Flack conducted research to try and bolster Moussaoui's connection to a

recognized foreign power. One of the documents Flack retrieved in her search was the Phoenix EC. Records show that Flack printed the Phoenix EC on August 22, 2001. Flack would testify that her usual practice was to read the documents that she printed, but she did not have a recollection of reading the Phoenix EC at the time.

Flack did not provide the EC to anyone else or discuss its contents with anyone, including Maltbie or the Minneapolis FBI.

On or about August 27, 2001, Maltbie and Flack met with Sherry Sabol to discuss the Moussaoui FISA request. This meeting lasted approximately 45 minutes. According to Sabol, during the meeting, she asked Maltbie and Flack whether the FBI had any information indicating that anyone was sending people to the United States for flight training, but was told no. Sabol would testify that Flack did not mention the Phoenix EC to her. Flack would testify that Sabol never brought up the issue of whether Middle Easterners were training in U.S. flight schools.

Agreed:  
Counsel for Mr. Moussaoui Counsel for the United States

Date: March 21, 2006